

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

City of Albany
1730 Solano Avenue
Albany, CA 94704
Attn: Community Development Director

No fee for recording pursuant to
Government Code Section 27383

(Space above for Recorder's Use)

**REGULATORY AGREEMENT AND DECLARATION OF RESTRICTIVE
COVENANTS -- INCLUSIONARY HOUSING**

(On-Site Inclusionary Unit)
1100 Portland Ave., Portland Gardens, LLC

This Regulatory Agreement and Declaration of Restrictive Covenants (the "Agreement") is entered into as of this ____ day of _____, 2010, by and between the City of Albany, a municipal corporation (the "City"), and Portland Gardens LLC, a California limited liability company (the "Owner") (collectively the "Parties"), with reference to the following facts:

RECITALS

A. The City has adopted an Inclusionary Housing Ordinance, Albany Municipal Code Section 20.40.030 (the "Inclusionary Ordinance") which requires that specified percentages of all new residential Unit developed in the City be affordable to very low income and low income households.

B. Owner is the owner of certain real property located at 1100 Portland Avenue (APN _____) in the City of Albany, California, described more particularly in Exhibit A which is attached hereto (the "Property"). Owner intends to convert 12 Units of residential rental housing to condominiums.

C. On January 11, 2005, the City of Albany Planning and Zoning Commission adopted a Notice of Action, which is attached hereto as Exhibit B (the "Notice of Action") [Jeff, we have never received this document], approving Planning Application _____, including a conditional use permit, design review, and tentative parcel map, for the Rental Development. The Notice of Action requires the Owner to convert one (1) inclusionary rental Unit (the "Inclusionary Unit") as part of the Rental Development and to enter into an affordable housing agreement meeting the standards of the Inclusionary Ordinance to assure the affordability of the Inclusionary Unit.

D. To meet the requirements of the Inclusionary Ordinance and the Notice of Action, the Owner has agreed to enter into and record this Agreement. The purpose of this Agreement is to regulate and restrict the rents and continued occupancy of the Inclusionary Unit and to implement controls on the management of the Inclusionary Unit. The covenants in this

Agreement are intended to run with the land and be binding on the Owner and its successors and assigns in the Property. This Agreement is an inclusionary housing agreement pursuant to Section 20,40.030.D of the Inclusionary Ordinance and shall be executed and recorded against the Property prior to approval of a final map.

NOW, THEREFORE, it is mutually agreed by and between the Parties as follows:

ARTICLE 1 DEFINITIONS AND EXHIBITS

Section 1.1 Definitions. In addition to those terms defined in the Recitals, the terms listed here have the following meanings in this Agreement:

- (a) "Annual Household Income" means the total anticipated annual gross income of all adult persons living in a household, as calculated in accordance with 25 California Code of Regulations Section 6914, or a successor State or City housing program that uses a reasonably similar method.
- (b) "Actual Household Size" means the actual number of persons in the household.
- (c) "Assumed Household Size" means a household of one person in a studio unit, two persons in a one bedroom unit, and three persons in a two-bedroom unit.
- (d) "Inclusionary Unit" means Low Income Unit.
- (e) "Low Income Household" means a household with an Annual Household Income that is less than or equal to the maximum income for low income households, adjusted for Actual Household Size, published annually by the California Department of Housing and Community Development for Alameda County.
- (f) "Low Income Unit" means Unit that, pursuant to Section 2.1 below, are required to be occupied by Low Income Households.
- (g) "Median Income" means the median income applicable to Alameda County and adjusted for household size, published annually by the California Department of Housing and Community Development.
- (h) "Purchaser" means a buyer of the Inclusionary Unit pursuant to a valid purchase and sale agreement.
- (i) "Rent" means the total of monthly payments by the Tenant of an Inclusionary Unit to the Owner for the following: use and occupancy of the Unit and land and associated facilities, including parking; any separately charged fees, utility charges, or service charges assessed by the Owner and payable by the Tenant (not including security deposits and fees and charges resulting from any default by the tenant or damage caused by the tenant); and any other interest, taxes, fees or charges for use of the land or associated facilities and assessed by a public or private entity other than the Owner, and paid by the Tenant.

(j) "Development" means the Property, the existing twelve (12) dwelling units on the Property which are to be converted to condominiums, any additional improvements constructed on the Property, and all landscaping, roads and parking spaces existing or to be constructed on the Property.

(k) "Tenant" means a household legally occupying an Inclusionary Unit pursuant to a valid rental agreement with Owner.

(l) "Term" means the term of this Agreement, which is set forth in Section ___ of this Agreement.

(m) "Utility Allowance" means an allowance for utility charges paid by the Tenant for an adequate level of garbage collection, sewer, water, electricity, gas and other heating, cooking and refrigeration fuel, but not telephone service or cable TV. Utility Allowances for tenant-paid utilities to be used for the calculation of permissible Rent under this Agreement shall be as provided by the City.

Section 1.2 Exhibits. The following Exhibits are attached and incorporated into this Agreement;

Exhibit A Legal Description of the Property

Exhibit B Notice of Action

Exhibit C Schedule of Qualifying Household Incomes for Inclusionary Unit

Exhibit D Location and Size of Inclusionary Unit

ARTICLE 2 AFFORDABILITY AND OCCUPANCY COVENANTS

Section 2.1 Occupancy Requirements.

(a) Low Income. One (1) dwelling Unit in the Rental Development shall be rented to and occupied by or, if vacant, available for occupancy by Low Income Households. The City shall annually provide the owner with a schedule showing maximum household income for Low Income, adjusted for Actual Household Size. The maximum household income for Low Income Households on initial occupancy as of the date of this Agreement is set forth in Exhibit C.

(b) Location of Unit and Bedroom Count. The Inclusionary Unit shall be a 2 - bedroom Unit, currently identified as Unit # 303, as shown in Exhibit D, attached hereto and incorporated herein.

Section 2.2 Schedule for Developing Inclusionary Unit. The Developer shall provide the Inclusionary Unit issued upon approval by the City of any final or parcel map for the Property:

(a) Prior to recordation of any final or parcel map for the Property, this Agreement shall be duly executed by the City and the Owner and recorded against the Property.

Section 2.3 Allowable Rent.

Affordable Rent. Subject to the provisions of Section 2.4 below, the Rent charged by the Owner to the Tenants of the Low Income Unit shall follow County of Alameda Low Income calculations not to exceed one twelfth (1/12th) of thirty percent (30%) of eighty percent (80%) of Median Income, adjusted for Assumed Household Size, and reduced by the amount of the Utility Allowance.

(a) City Approval of Rents. The City shall provide the Owner with a schedule of maximum permissible rents and Utility Allowances for the Inclusionary Unit annually. All rent increases will follow these annual guidelines.

Section 2.4 Increased Income of Tenants.

(A) Increase to Within 120% of Median Income. If, upon annual recertification of the income of a Tenant of an Inclusionary Unit, the Owner determines that the Tenant's Annual Household Income exceeds the qualifying income for a Low Income Household, but the Annual Household Income is not over one hundred twenty percent (120%) of Median Income, adjusted for Actual Household Size, then the Tenant may remain in the Inclusionary Unit at the same restricted rent, and the Unit shall continue to qualify as a Low Income Unit.

(b) Increase to Over 120% of Median Income. If, upon annual recertification of the income of a Tenant of an Inclusionary Unit, the Owner determines that the Tenant's Annual Household Income exceeds one hundred twenty percent (120%) of Median Income, adjusted for Actual Household Size, the tenant shall be given twelve (12) months' notice to vacate the Inclusionary Unit.

(c) Termination of Occupancy. The occupancy requirements included in Section 2.1 shall be maintained for the Term of this Agreement. When the unit is vacated, it will be re-rented as an Inclusionary Unit.

Section 2.5 Allowable Sale Price.

Section 2.6 Payment of In-Lieu Fee

Marketing, Rental or Sale of Inclusionary Unit. The Owner shall market the Inclusionary Unit on both an initial and ongoing basis in accordance with the City's tenant/ purchaser selection preferences. The tenant/purchaser preferences will be developed by the City and will be monitored by the City Planning Manager. Changes to the tenant preferences will be communicated from the City to the Owners annually in conjunction with the updated Qualifying Income Schedule for Inclusionary Units. The Owner shall comply with applicable fair housing

laws in the marketing and rental of the Inclusionary Unit, and will market the Unit to all eligible tenants through readily available online rental postal services, and through signage on the exterior of the building.

Section 2.7 Nondiscrimination. The Inclusionary Unit shall be available for occupancy on a continuous basis to members of the general public who are income eligible. The Owner shall consider all eligible applicants, based on the City's preferences and on the requirement that it is leased or sold to Low Income Households. The Owner shall not discriminate or segregate against any person in any part of the Development on account of race, color, creed, religion, sex, sexual orientation, marital or family status, national origin, source of income (e.g., SSI), age, ancestry, disability, or any other arbitrary basis in the leasing, subleasing, transferring, use, occupancy, tenure, or enjoyment of the Development, nor shall the Owner establish or permit any practice of discrimination or segregation with reference to the selection, location, number, use, or occupancy of the Development.

Section 2.8 Section 8 Certificate Holders. The Owner will accept as Tenants, on the same basis as all other prospective Tenants, persons who are recipients of federal certificates for rent subsidies pursuant to the existing housing program under Section 8 of the United States Housing Act, or its successor. The Owner shall not apply selection criteria to Section 8 certificate or voucher holders that are more burdensome than criteria applied to all other prospective Tenants of the Inclusionary Unit or that have the effect of precluding occupancy of Inclusionary Unit by such prospective Tenants.

Section 2.9 City Approval of Documents. The following documents, to be approved in writing by the City, shall be used in connection with the rental or sale of the Inclusionary Unit. Any amendments to the following documents shall also be approved by the City:

(a) Lease to be signed by Tenants of the Inclusionary Unit. The lease shall include the following provisions: (i) a minimum __12-month term; (ii) the Tenant's obligation to inform the Owner of any need for maintenance or repair; (iii) a prohibition against sublease of the Inclusionary Unit; (iv) an obligation to report changes in household size and/or household income to the Owner; (v) nondiscrimination provisions; (vi) an obligation to provide annual income certifications and documentation to the Owner and the City; and (vii) an obligation to comply with all monitoring requests of the City or its designee.

(b) Purchase and Sale Agreement. TBD

ARTICLE 3 INCOME CERTIFICATION AND REPORTING

Section 3.1 Income Certification. The Owner will obtain, complete and maintain on file, immediately prior to initial occupancy and annually thereafter, income certifications from each Tenant renting or Purchaser buying the Inclusionary Unit. The Owner shall make a good faith effort to verify that the income provided by an applicant or occupying household in an income certification is accurate by taking two or more of the following steps as a part of the verification process: (a) obtain a pay stub for the most recent pay period; (b) obtain an income tax return for the most recent tax year; (c) conduct a credit agency or similar search; (d) obtain an income verification form from the applicant's current employer; (e) obtain an income verification

form from the Social Security Administration and/or the California Department of Social Services if the applicant receives assistance from either of such agencies; or (f) if the applicant is unemployed and has no such tax return, obtain another form of independent verification. The Owner shall submit copies () of all income certifications of all persons to whom the Owner selects to rent or sell an Inclusionary Unit (to the City), and shall not enter into a rental agreement or commitment to rent to such household until the City approves the income certification in writing. The City shall have three (3) business days to review tenant certification. Copies of Tenant annual income recertifications shall be available to the City upon request.

Section 3.2 Compliance Reports. A compliance report, verifying compliance of the Inclusionary Unit with the terms of this Agreement, and certified as correct under penalty of perjury by the Owner and any property management company managing the Unit, shall be submitted annually to the City on January 15th of each year. The compliance report shall include the name, address, and income of each person occupying the Inclusionary Unit.

Section 3.3 Additional Information. The Owner shall provide any additional information reasonably requested by the City. The City shall have the right to examine and make copies of all books, records, or other documents of the Owner which pertain to the Inclusionary Unit.

Section 3.4 Records and Monitoring. The Owner shall maintain complete, accurate, and current records pertaining to the Inclusionary Unit, including records pertaining to income and household size of Tenants. All Tenant lists, applications, and waiting lists relating to the Development shall be kept separate and identifiable from any other business of the Owner and shall be maintained as required by the City, in a reasonable condition for proper audit. Owner shall retain all records related to compliance with obligations under this Agreement and the Inclusionary Ordinance for a period not less than five (5) years from the date of origination of such records, and make them available to the City for inspection and copying on five (5) business days' written notice. Owner shall permit the City to inspect the Property to monitor compliance with this Agreement following two (2) business days' written notice to Owner.

ARTICLE 4 PROPERTY MANAGEMENT AND MAINTENANCE

Section 4.1 Residential Use as Housing. The Unit shall be operated only for residential use as multifamily rental housing. No part of the property shall be operated as transient housing.

Section 4.2 Sale of Inclusionary Unit. Owner may sell the Inclusionary Unit pursuant to the terms of this Section 4.2. The Inclusionary Unit shall be sold to a Low Income Household, as applicable, at a price affordable to a Low Income Household, except that the Inclusionary Unit shall first be offered for sale to the then existing Tenant, if any, at the price determined in accordance with Section 2.5 above. At least sixty (60) days before offering a Inclusionary Unit for sale, the Owner shall provide the City with written notice of the proposed sale of the Inclusionary Unit, and shall comply with the procedures established by the City for the sale of ownership inclusionary Unit, including the maintenance of affordability in perpetuity.

Section 4.3 Compliance with Inclusionary Ordinance and Conditions of Approval. Owner shall comply with all applicable terms and provisions of the Inclusionary Ordinance and all conditions included in the Notice of Action.

Section 4.4 Management Responsibilities. The Owner is responsible for performing all management functions with respect to the Inclusionary Unit, including without limitation the selection of tenants, certification and recertification of household size and income, evictions, collection of rents and deposits, maintenance, landscaping, repairs, replacement of capital items, and security. The City shall have no responsibility over management of the the Inclusionary Unit, or the Development. The Owner shall retain a professional property management company approved by the City in its reasonable discretion to perform its management duties hereunder. With prior City approval, the Owner may also self-manage the Rental Development.

Section 4.5 Property Maintenance. For the entire Term of this Agreement, the Owner shall maintain all interior and exterior improvements, including landscaping, on the Property in good condition and repair (and, as to landscaping, in a healthy condition) and in accordance with all applicable laws, rules, ordinances, orders and regulations of all federal, state, county, municipal, and other governmental agencies.

ARTICLE 5 DEFAULT AND REMEDIES

Section 5.1 Default. Failure of the Owner to cure any default in the Owner's obligations under the terms of this Agreement within thirty (30) days after the delivery of a notice of default from the City will constitute a default under this Agreement and will also constitute a failure to satisfy the provisions of the Inclusionary Ordinance and the conditions included in the Notice of Action. In addition to remedies for breach of this Agreement, the City may exercise any and all remedies available to it under State law, the Inclusionary Ordinance, the Albany Municipal Code, and otherwise, with respect to the Owner's failure to satisfy the provisions of the Inclusionary Ordinance, the conditions included in the Notice of Action, and the terms of this Agreement. The City's remedies for a default include but are not limited to:

(a) instituting against the Owner or other parties a civil action for declaratory relief, injunction, or any other equitable relief, or relief at law, including without limitation an action to rescind a transaction and/or to require repayment of any funds received in connection with such a violation;

(b) where one or more persons have received financial benefit as a result of a violation of this Agreement or of any requirement imposed under the Inclusionary Ordinance, the City may assess, and institute legal action to recover as necessary, a penalty in any amount up to and including the amount of financial benefit received, in addition to recovery of other benefits received;

(c) prosecuting a misdemeanor against any person who has imposed a Rent or sales price on an Inclusionary Unit exceeding the maximum allowed under this Agreement or has rented or sold an Inclusionary Unit to a household not qualified under this Agreement, or who

has otherwise violated the Inclusionary Ordinance, or any other agreement, restriction or requirement authorized or imposed under the Inclusionary Ordinance; and

(d) any other remedies authorized under the City of Albany Municipal Code.

Section 5.2 Remedies Cumulative. No right, power, or remedy given to the City by the terms of this Agreement or the Inclusionary Ordinance is intended to be exclusive of any other right, power, or remedy; and each and every such right, power, or remedy shall be cumulative and in addition to every other right, power, or remedy given to the City by the terms of any such document, the Inclusionary Ordinance, or by any statute or otherwise against Owner and any other person. Neither the failure nor any delay on the part of the City to exercise any such rights and remedies shall operate as a waiver thereof, nor shall any single or partial exercise by the City of any such right or remedy preclude any other or further exercise of such right or remedy, or any other right or remedy.

Section 5.3 Third Party Beneficiary. Low Income Households who are eligible to rent an Inclusionary Unit under this Agreement are third party beneficiaries of this Agreement.

ARTICLE 6 GENERAL PROVISIONS

Section 6.1 Appointment of Other Entities. At its sole discretion, the City may designate any other public agency, for-profit, or non-profit entity to perform the City's obligations under this Agreement. The City shall notify the Owner of any designee pursuant to Section 6.5 of this Agreement.

Section 6.2 Hold Harmless. Owner will indemnify and hold harmless City and its elected officials, officers, employees and agents in their official capacity (collectively "Indemnitees") from and against all loss, all risk of loss and all damage (including expense) sustained or incurred because of any and all claims, demands, suits, actions, judgments and executions for damages allegedly arising out of the Inclusionary Unit or Owner's performance or non-performance under this Agreement, and shall defend Indemnitees except to the extent caused by the gross negligence or willful misconduct of the City. The provisions of this section shall survive termination of this Agreement or any release of part or all of the Property from the burdens of this Agreement.

Section 6.3 Covenants to Run With the Land. The City and the Owner hereby declare their express intent that the covenants and restrictions set forth in this Agreement shall run with the land, and shall bind all successors in title to the Property, unless the Agreement is terminated by mutual consent of the Parties, or the City releases part or all of the property from the burdens of this Agreement.

Section 6.4 Attorneys Fees and Costs. In any action brought to enforce this Agreement, the prevailing party shall be entitled to all costs and expenses of suit, including attorneys' fees. This section shall be interpreted in accordance with California Civil Code Section 1717 and judicial decisions interpreting that statute.

Section 6.5 Notices. All notices required pursuant to this Agreement shall be in writing and may be given by personal delivery or by registered or certified mail, return receipt requested, to the Party to receive such notice at the address set forth below:

TO THE CITY:

City of Albany
1000 San Pablo Avenue
Albany, CA 94706
Attn: Community Development Director

TO THE OWNER:

Portland Gardens, LLC

937 Evelyn Ave. _____

Albany, Ca. 94706
Attn: Sarah Woodard or Charles Keene or Frank

Bergamaschi _____

Any party may change the address to which notices are to be sent by notifying the other parties of the new address, in the manner set forth above.

Section 6.6 Entire Agreement. This Agreement constitutes the entire agreement between the parties and no modification hereof shall be binding unless reduced to writing and signed by the Parties.

Section 6.7 Duration and Amendment of Agreement. This Agreement shall remain in effect for a term of 55 years. This Agreement may be amended only upon the written consent of the City Administrator or his or her designee, who shall have authority in his or her discretion to approve or disapprove an amendment on behalf of the City.

Section 6.8 Applicable Law and Venue. The laws of the State of California shall govern this Agreement. Venue for any dispute arising out of this Agreement shall be Alameda County, California.

Section 6.9 Waivers. Any waiver by the City of any obligation in this Agreement must be in writing. No waiver will be implied from any delay or failure by the City to take action on any breach or default of Owner or to pursue any remedy allowed under this Agreement or applicable law. Consent by the City to any act or omission by Owner shall not be construed to be a consent to any other or subsequent act or omission or to waive the requirement for the City's written consent to future waivers.

Section 6.10 Title of Parts and Sections. Any titles of the sections or subsections of this Agreement are inserted for convenience only and shall be disregarded in interpreting any part of the Agreement's provisions.

Section 6.11 Recording of Agreement. The Owner shall cause this Agreement to be recorded against the Property in the Official Records of the County of Alameda.

Section 6.12 Severability. If any provision of this Agreement is held invalid, illegal, or unenforceable by any court of competent jurisdiction, the validity, legality, and enforceability of the remaining portions of this Agreement shall not in any way be affected or impaired thereby.

SIGNATURES ON FOLLOWING PAGE

DRAFT

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the day and year first above written.

OWNER:

Portland Gardens LLC, a California limited liability company

By: _____

Its: _____

CITY:

CITY OF ALBANY, a municipal corporation

By: _____

Its: _____

APPROVED AS TO FORM:

By: _____
City Attorney

DRAFT

STATE OF CALIFORNIA)
) ss.
COUNTY OF)

On _____, 2006, before me, _____,
Notary Public, personally appeared _____ personally known to me
(or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are
subscribed to the within instrument and acknowledged to me that he/she/they executed the same
in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument
the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature _____ (Seal)

STATE OF CALIFORNIA)
) ss.
COUNTY OF)

On _____, 2006, before me, _____,
Notary Public, personally appeared _____ personally known to me
(or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are
subscribed to the within instrument and acknowledged to me that he/she/they executed the same
in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument
the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature _____ (Seal)

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

DRAFT

EXHIBIT B

NOTICE OF ACTION

DRAFT

EXHIBIT C

QUALIFYING HOUSEHOLD INCOMES FOR INCLUSIONARY UNIT

DRAFT

EXHIBIT D

LOCATION AND SIZE OF INCLUSIONARY UNIT

DRAFT